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Letter dated 13 April 2018 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the report of the International Residual Mechanism for Criminal Tribunals on the progress of its work (see annex), submitted in accordance with the statement by the President of the Security Council of 19 March 2018 (S/PRST/2018/6).

I would be grateful if the present letter and its annex could be circulated to the members of the Security Council.

(*Signed*) Theodor **Meron**
President

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Annex to the letter dated 13 April 2018 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

[Original: English and French]

Report of the International Residual Mechanism for Criminal Tribunals on the progress of its work in accordance with the statement by the President of the Security Council of 19 March 2018

Contents

		Page
I.	Introduction	4
II.	Chambers	5
	A. Judicial activities	6
	1. Appeals from judgments	7
	2. Review proceedings	8
	3. Trial proceedings	9
	4. Contempt of court and false testimony	10
	5. Cases referred to national jurisdictions	10
	6. Enforcement proceedings	11
	7. Other judicial workload	12
	B. Other activities	13
	C. Evaluation of the Office of Internal Oversight Services	13
III.	Prosecutor	13
	A. Expeditious completion of trials and appeals	14
	B. Fugitives	15
	C. Assistance to national war crimes prosecutions	16
	D. Management	18
	E. Evaluation of the Office of Internal Oversight Services	18
IV.	Registry	19
	A. Support for judicial activities	20
	B. Protection of victims and witnesses	21
	C. Archives and records management	22
	D. Supervision of enforcement of sentences	22
	E. Assistance to national jurisdictions	23
	F. Relocation of acquitted and released persons	23
	G. Budget, staffing and administration	23

H. Other activities ... 25

I. Evaluation of the Office of Internal Oversight Services ... 25

V. Conclusion ... 26

Enclosures ...

1. Public legal and regulatory instruments and policies promulgated by the Mechanism, as at 13 April 2018 ... 27

2. Judgments, orders and decisions issued by the Mechanism, as at 13 April 2018 ... 30

3. Projected timeline for completion of trials and appeals from judgment ... 33

1. The present report is submitted pursuant to the statement by the President of the Security Council of 19 March 2018 (S/PRST/2018/6), in which the Council requested the International Residual Mechanism for Criminal Tribunals to present, by 15 April 2018, a report on the progress of its work since the previous review of the Mechanism in December 2015, including in completing its functions.[1]

I. Introduction

2. The Security Council, by its resolution 1966 (2010), established the Mechanism to carry out a number of the essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia after the closure of those Tribunals. As at the commencement date of operations at each of its two branches, one in Arusha for the International Criminal Tribunal for Rwanda and one in The Hague for the International Tribunal for the Former Yugoslavia, the Mechanism continued the jurisdiction, rights and obligations and essential functions of both Tribunals, subject to the provisions of resolution 1966 (2010) and of the statute of the Mechanism.[2] In accordance with that resolution, the Mechanism was to operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Council decides otherwise.

3. During the period since the previous review of the Mechanism in December 2015, the Mechanism has assumed responsibility for all remaining functions from both Tribunals. The Mechanism worked closely with both Tribunals to ensure the smooth and efficient transition of the remaining functions and services of these Tribunals to the Mechanism. The Mechanism was also engaged in a period of heightened judicial activity during the review period, with the commencement of the retrial in the *Stanišić and Simatović* case, the conduct of appeal proceedings in the *Karadžić*, *Šešelj* and *Mladić* cases (including the delivery of the appeal judgment in the *Šešelj* case), a number of requests for review of final judgments and ongoing judicial activity, for example, addressing requests for assistance from national authorities, applications concerning the variation of protective measures, and a wide range of other requests for relief. In addition, the Mechanism has continued to elaborate its legal and regulatory framework (as set forth in enclosure I below), to carry out its mandated functions concerning witness protection, to supervise the enforcement of sentences and to undertake a range of other matters, as well as to develop and refine procedures and working methods that harmonize and build upon the best practices of both Tribunals while reflecting the particular operational needs of a smaller institution located on two continents. As recognized in the 8 March 2018 evaluation report by the Office of Internal Oversight Services (OIOS) (S/2018/206), the Mechanism has already achieved much of what the Security Council envisaged in resolution 1966 (2010) and has made considerable progress in response to its mandate to establish itself as a lean and efficient institution by harnessing strategic and operational innovations.

4. Although the Mechanism continued to make significant progress in the fulfilment of its mandate, it faced significant challenges during the present review period. It has long been anticipated that the Mechanism would face new hurdles following the closure of both Tribunals, upon whose support and services the Mechanism depended from its inception. Following the December 2017 decision of the General Assembly not to approve the Mechanism's proposed budget for the biennium 2018–2019, however, the Mechanism rethought much of its long-term

[1] Unless otherwise specified, figures discussed in the present report are accurate as at 31 March 2018.

[2] Security Council resolution 1966 (2010), annex 1.

planning and fundamentally reconfigured a wide range of its operations. In view of the decision of the General Assembly and pending further action in relation to a revised and significantly reduced budget proposal for the biennium, the Mechanism developed and is implementing an expenditure reduction plan to reduce the size of its staff, as well as to cut a number of non-post resources.

5. These reductions will leave or already have left the Mechanism with skeletal staffing levels in many areas, opening the institution up to considerable operational risks that may have a negative impact on its ability to conduct and complete its functions in a timely and effective manner. Thus, for example, reductions in Security and in Language Support Services staff have an impact on the ability of the Mechanism to hold more than one proceeding in a day and sit for extended hours, if needed, absent significant advance notice. The reductions being undertaken also require the Mechanism to postpone or delay a variety of planned activities, such as the certification of the judicial record in a number of cases, the work to preserve audiovisual recordings currently stored on obsolete physical media (and the provision of public access to those recordings) and production of a publicly accessible catalogue of the archives. The reductions at issue include not just staffing but also non-post resources, such as the deferral of the acquisition of essential backup facilities for the digital archives. Further examples of the impact of the reductions are provided below. All of these various reductions and the overall uncertainty have decreased staff morale and increased the risk of staff attrition (which in turn can lead and has already led to a significant loss of institutional knowledge).

6. Notwithstanding these challenges, the Mechanism is determined to continue to facilitate the effective and efficient fulfilment of its mandate. Notably, throughout the review period, the Mechanism adhered to the Security Council's vision of the Mechanism as a small, temporary and efficient structure, whose functions and size will diminish over time. As recognized by OIOS, the Mechanism has remained mindful of its mandate to be temporary, although some of its continuous functions are long-term in nature.

7. The present report provides an overview of the progress of work of the Mechanism during the review period, including with regard to the completion of its functions.[1]

II. Chambers

8. In contrast to the two Tribunals, which had full-time judges, the Chambers of the Mechanism is composed of a full-time President and 24 other independent judges who are called from a roster of judges, only as needed, to perform the judicial work of the Mechanism either remotely or, when necessary, at one of the seats of the Mechanism. With the exception of one judge recently appointed to the roster, all rostered judges were called upon to exercise judicial functions in relation to one or more cases during the review period.

9. In addition to judicial responsibilities, which include presiding over the Appeals Chamber and coordinating the work of the Chambers, the President has the overall supervisory and representative responsibility for the Mechanism. During the review period, the President focused on ensuring the expeditious conduct of the judicial work

[1] The present report should be read in conjunction with the report of the Mechanism on the progress of its work in the initial period (S/2015/896) and previous reports submitted by the Mechanism pursuant to article 32 of the statute during the initial period of its operations: S/2012/849; S/2013/309; A/68/219-S/2013/464; S/2013/679; S/2014/350; A/69/226-S/2014/555; S/2014/826; S/2015/341; A/70/225-S/2015/586; S/2015/883; S/2016/453; A/71/262-S/2016/669; S/2016/975; S/2017/434; A/72/261-S/2017/661; and S/2017/971.

of the Chambers, providing oversight for the activities of the Registry and guiding the institution in the timely, effective and efficient discharge of its mandate.

10. The President and the judges of the Mechanism are supported by a small team of legal and administrative staff in the execution of their judicial mandates and, in the case of the President, supervisory and representative responsibilities. During the review period, the Chambers — under the supervision of the President — was able to maximize efficiency in productivity while maintaining relatively low legal and administrative support staffing levels. To this end, legal staff of the Chambers Legal Support Section are assigned to multiple matters across the branches to ensure maximum flexibility; facilitate legal research, analysis and drafting of orders, decisions and judgments; and provide individualized support to judges, as needed, in connection with their judicial work. The creation and elaboration of jurisprudential digests on a range of key topics, along with the adoption of templates and protocols for an eventual trial of a fugitive, as well as the processing of common requests, such as requests for the variation of witness protection measures, serve to further facilitate efficient support of the Mechanism's judges. Furthermore, with a large portion of staff drawn from both Tribunals, the Chambers Legal Support Section has been able to capitalize on staff expertise and knowledge of institutional history in identifying and implementing best practices in relation to supporting the judicial work of the Mechanism and the development of policies, practice directions and internal guidelines on a wide range of issues. In addition, the Section maintains and regularly refreshes its rosters of qualified candidates at all professional and administrative staffing levels to ensure ongoing capacity for rapid recruitment in response to an increase in judicial workload.

11. Notwithstanding these strengths, both the Chambers Legal Support Section and the Office of the President have been impacted by the decision not to approve the Mechanism's budget as originally proposed for the biennium 2018–2019. In particular, the departure of several staff members from the already lean teams and the deferral of recruitment to fill vacancies have increased the workload of existing staff and have resulted in longer time frames for addressing less time-sensitive matters. The absence of an approved biennial budget has also impacted staff morale, giving rise to a risk of staff attrition, which may have an impact on the timely completion of judicial activities as outlined below.

A. Judicial activities

12. The Mechanism engaged in a wide variety of judicial work during the review period. Notably, the Mechanism received appeals from judgment in the *Karadžić*, *Šešelj* and *Mladić* cases, generating heavy pre-appeal litigation in addition to the substantive work on the appeals, and issued its judgment in the *Šešelj* case. Furthermore, following the judgment of the International Tribunal for the Former Yugoslavia Appeals Chamber in December 2015 to order a full retrial in the *Stanišić and Simatović* case, the Mechanism is seized of its first trial. In connection with this, the Trial Chamber engaged in extensive pretrial preparations, including issuing numerous decisions and orders, holding regular status and trial preparation conferences with the parties, holding evidentiary hearings with medical experts and setting the modalities for trial in view of the health situation of the accused. All the while, the Mechanism continued to adjudicate matters related to, inter alia, the enforcement of sentences, administrative review, review proceedings, appeal proceedings, contempt, requests for revocation of the referral of cases to national jurisdictions, variation of witness protection measures, access to materials, disclosure, changes in classification of documents, and assignment of counsel.

13. This heightened judicial activity is reflected in the number of decisions and orders rendered. As set forth in enclosure 2 below, the President and judges of the Mechanism delivered a total of 954 decisions and orders from 1 January 2016 through 13 April 2018. By comparison, in 2015, the Chambers issued 209 decisions and orders (95 Arusha branch and 114 The Hague branch), while the Mechanism issued twice that number of decisions and orders in each of 2016 and 2017: 405 (170 Arusha branch and 235 The Hague branch) and 406 (112 Arusha branch and 294 The Hague branch), respectively. Already, in the first three-and-a-half months of 2018, the Chambers has issued 143 decisions and orders (22 Arusha branch and 121 The Hague branch).

14. An overview of the Mechanism's judicial activities during the review period, including its progress in completing its functions, is set forth below. Detailed timelines for the projected completion of certain of the cases discussed below are set forth in enclosure 3 below. All estimates in the present report related to judicial activities presume that no extraordinary events occur during the course of the proceedings that may impact their conduct, such as the replacement of counsel owing to health issues, newly arising conflicts or other reasons, or the illness of an accused. All projections remain subject to periodic updating based on any new information. In this respect, the Mechanism recalls that, in its 12 May 2016 evaluation report (A/70/873-S/2016/441), OIOS indicated with respect to cases of the International Tribunal for the Former Yugoslavia that any changes based on the requirements of a just resolution of a case should not be construed necessarily to reflect slippage in the conduct of a case and that accurate predictions as to completion could be made only at the close of a trial or at the conclusion of briefing on appeal. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism recalls the observations made in the report of the Secretary-General of 21 May 2009 that "it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral cases and pardon and commutation of sentences will arise" but that "such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals" and that "the level of work involved [...] will inevitably decrease over time" (S/2009/258, para. 102).

1. Appeals from judgments

15. The Appeals Chamber of the Mechanism is responsible for conducting appeal proceedings in cases in which trials were completed after the commencement of operations at each branch and in any case in which a trial or retrial was conducted by the Mechanism.

16. The appeals by Radovan Karadžić and the Prosecution against the trial judgment issued on 24 March 2016 by a Trial Chamber of the International Tribunal for the Former Yugoslavia in the *Karadžić* case were received during the review period. Citing the unprecedented breadth and complexity of the case, the large amount of evidence on the record, the length of the trial judgment and the complexity of the issues raised on appeal, the Defence and the Prosecution requested the Appeals Chamber to grant extensions of time for the briefing process. The Appeals Chamber partly granted the requests and, after 217 days of extensions of time, the briefing process concluded on 6 April 2017 with the filing of the parties' reply briefs. An appeal hearing is scheduled for 23 and 24 April 2018, ahead of the previous projected schedule, and the aim is now to complete the case in December 2018 (subject to developments in the upcoming hearing and the deliberations of the judges), significantly earlier than projected. At the current stage of the proceedings, all the judges on the bench in this case are carrying out their work remotely with the exception of the President, who is presiding as prescribed by the statute.

17. On 31 March 2016, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment in the case of *Vojislav Šešelj*, finding him not guilty on all counts. The Prosecution filed its notice of appeal on 2 May 2016 and its appeal brief on 29 August 2016. Mr. Šešelj submitted his response brief on 19 December 2016 in Bosnian/Croatian/Serbian, and the briefing process concluded on 22 February 2017 with the filing of the Prosecution's reply brief. In view of Mr. Šešelj's stated intention not to participate in the appeal hearing, the Appeals Chamber requested him to reconsider his position and, when he did not, assigned counsel to represent his interests at the appeal hearing while giving him the opportunity to respond in writing to the appeals transcripts. The appeal hearing was held on 13 December 2017, and the appeal judgment was delivered on 11 April 2018, more than a year earlier than the previous projection. The advancement of the judgment by more than a year as compared with the initial projection resulted from the earlier than anticipated translation of the trial judgment from French into English and Bosnian/Croatian/Serbian, which expedited briefing. In view of reductions to the number of Language Support Services staff resulting from the decision taken with regard to the Mechanism's proposed budget for the biennium 2018–2019, this type of advancement is not anticipated going forward. In the appeal judgment, the Appeals Chamber reversed Mr. Šešelj's acquittals, in part, and convicted him of instigating persecution (forcible displacement), deportation and other inhumane acts (forcible transfer) as crimes against humanity and of committing persecution (violation of the right to security) as a crime against humanity in Hrtkovci, Vojvodina (Serbia). The Appeals Chamber sentenced Mr. Šešelj to 10 years of imprisonment but declared the sentence served in view of the credit to which he is entitled under the Rules of Procedure and Evidence for his detention in the custody of the International Tribunal for the Former Yugoslavia pending trial from 14 February 2003 to 6 November 2014. Apart from the President, who was presiding as prescribed by the statute, all the judges on the bench in this case carried out their work remotely, with the exception of the appeal hearing, in-person deliberations and the delivery of the judgment.

18. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment in the case of *Ratko Mladić*. Citing the extraordinary breadth and complexity of the case, the length of the trial judgment, the lack of defence resources, and intended medical and legal filings, Mr. Mladić requested the Appeals Chamber to extend the deadline for filing his notice of appeal, a request to which the Prosecution agreed in part. The Appeals Chamber granted a limited extension of time for the filing of notices of appeal and rejected a request for a further extension of time. Both Mr. Mladić and the Prosecution filed their notices of appeal on 22 March 2018. As set forth above, accurate predictions as to completion can only be made at the conclusion of the briefing. At this stage, a pre-briefing estimate can be made for completion of the case by the end of 2020. At present, all the judges on the bench in this case are carrying out their work remotely with the exception of the President, who is presiding as prescribed by the statute.

2. Review proceedings

19. During the review period, the Appeals Chamber was seized with a number of requests for review of final judgments issued by both Tribunals and related requests for the assignment of counsel. A convicted person's right to review of a final judgment is fundamental and is provided for in the statute. The Prosecution also has the ability to seek review in the first year after the issuance of a final judgment. Review proceedings require a threshold determination by the Appeals Chamber of whether the applicant has identified a new fact that was unknown during the original proceedings which if established would have been a decisive factor in reaching the verdict. If the threshold is met, a review of the judgment is authorized, further proceedings are held and a review judgment is issued.

20. The Appeals Chamber issued 48 decisions or orders (46 Arusha branch and 2 The Hague branch) during the review period related to six applications for review or related requests for assignment of counsel. With a view to disposing of these matters efficiently, the President has presided over each case and prepared the case for deliberations, while other judges have worked remotely.

21. The Appeals Chamber is currently seized of one application for review related to the *Ngirabatware* case arising at the Arusha branch.

22. On 8 July 2016, Augustin Ngirabatware filed a request for review of his judgment. The proceedings in the case were delayed owing to the inability of Judge Aydin Sefa Akay to exercise his judicial functions in this case until his provisional release from detention on 14 June 2017. Thereafter, the Appeals Chamber was able to consider the merits of Mr. Ngirabatware's request. On 19 June 2017, the Appeals Chamber granted the request for review and ordered the parties to file a list of proposed evidence and witnesses to be introduced at a review hearing. On 19 December 2017, the Appeals Chamber authorized the replacement of Mr. Ngirabatware's counsel in view of a conflict of interest, and proceedings are ongoing to determine an appropriate time to hold the review hearing in view of the need of the new counsel to familiarize herself with the proceedings. It is expected that a hearing could be held in the second half of the year and a review judgment pronounced by the end of 2018. At the current stage of the proceedings, all the judges on the bench in this case are carrying out their work remotely with the exception of the President, who is presiding as prescribed by the statute.

23. On 6 April 2018, the Registrar informed the Appeals Chamber of the death of Mr. Niyitegeka on 28 March 2018. The Appeals Chamber is currently considering the impact of this development on the request for review, with all judges, with the exception of the President, working remotely.

24. Based on past experience, it is estimated that the Mechanism will receive at least three requests for review per year in the coming bienniums. If review is authorized, it is estimated that the proceedings will last at a minimum one year from the filing of the initial request for review to the issuance of the review judgment.

3. Trial proceedings

25. The Trial Chambers of the Mechanism are responsible for the conduct of trial proceedings in the event of the arrest of any of the three remaining fugitives indicted by the International Criminal Tribunal for Rwanda whose cases remain within the jurisdiction of the Mechanism, and any retrial.

26. On 9 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia issued its judgment in the case of *Jovica Stanišić and Franko Simatović*, quashing the acquittals entered by a Trial Chamber and ordering a full retrial on all counts. The Trial Chamber of the Mechanism for the branch in The Hague is seized of the case. Trial preparation hearings were held on 19 February 2016, 23 May 2016, 28 September 2016, 14 December 2016, 7 April 2017 and 17 May 2017. In addition, the Trial Chamber held hearings on 13 December 2016 and 2 February 2017 to hear expert medical evidence in order to assist it in formulating the modalities for trial to accommodate Mr. Stanišić's health conditions. The trial commenced on 13 June 2017, and the presentation of the Prosecution's case is ongoing. It is currently anticipated that the Prosecution will conclude the presentation of its evidence in the first part of the second half of 2018. Following that and the filing of the Defence's witness and exhibit lists, more detailed projections can be made concerning the overall duration of the case. However, using the time frame of the original trial as a guide, it may be expected that the case will be completed in the second half of 2020. At the current stage of the proceedings, all the judges on the bench in this case are

carrying out their work at the seat of the Mechanism's branch in The Hague. During the pretrial phase of the case, with the exception of two hearings, only the presiding judge, who was a double-hatted judge for the International Tribunal for the Former Yugoslavia at the time, was present at the seat of the branch, with the other two judges working remotely.

27. The Mechanism is also planning for the possibility of at least two fugitive trials at the Arusha branch. Bearing in mind the anticipated complexity of these cases and the past experience of trials at the International Criminal Tribunal for Rwanda, it is estimated that each trial may last two-and-a-half years from arrest until the delivery of the trial judgment. Approximately 12 months of this period would be focused on pretrial activity, which is handled principally by a pretrial judge. The involvement of the full bench would be necessary only in relation to certain key decisions during this phase of the proceedings. In those circumstances, the members of the trial bench other than the pretrial or presiding judge would carry out their functions remotely for each discrete assignment, away from the seat of the Mechanism. As provided for in the statute, the judges will be remunerated only for each day on which they exercise their functions, in accordance with the President's indication of the time reasonably necessary for the assignment. The trial, deliberations and judgment-drafting phase of the case, which involves the full bench, may last approximately 18 months. It is estimated that any resulting appeal from judgment may take two years from the filing of the trial judgment to the delivery of the appeal judgment. Prior to actual arrests and the developments in pretrial or pre-appeal proceedings, however, these estimates are tentative.

4. Contempt of court and false testimony

28. In accordance with the statute, a single judge of the Mechanism is responsible for conducting any trials for allegations of contempt of court or false testimony related to cases before either of the Tribunals, or the Mechanism, provided that such cases are not transferred to a national jurisdiction in accordance with article 1 (4) of the statute. Any appeals from such trials before a single judge are to be dealt with by a three-judge bench of the Appeals Chamber of the Mechanism.

29. To date, the Mechanism has not conducted any trial proceedings in cases involving allegations of contempt of court or false testimony, although during the review period single judges issued 43 decisions and orders related to applications for the commencement of such proceedings. Because of the variable nature of allegations involving contempt of court or false testimony, it is difficult to estimate the length of time for any possible trial or appeal proceedings, although such proceedings are expected to be significantly shorter than trials conducted pursuant to article 1 (2) and (3) of the statute. As the Mechanism has a continuing obligation to safeguard the administration of justice, its duty to investigate and prosecute allegations of contempt or false testimony, subject to the provisions of article 1 (4) of the statute, will continue until its closure.

5. Cases referred to national jurisdictions

30. The Mechanism is responsible for monitoring cases referred to domestic jurisdictions for trial. The President is responsible for supervising the monitoring of such cases. Pursuant to the statute, the Rules of Procedure and Evidence, and applicable jurisprudence, the Prosecutor and, in certain cases, the accused may request the revocation of the referral before the case reaches final judgment in the domestic proceedings. In the event of a request for revocation, or acting *proprio motu*, the President may assign a Trial Chamber to decide whether to revoke the referral.

31. During the review period, the Mechanism continued to monitor the cases of *Jean Uwinkindi*, *Bernard Munyagishari* and *Ladislas Ntaganzwa*, who had been indicted by the International Criminal Tribunal for Rwanda and whose cases were referred by that Tribunal to Rwanda, as well as the cases of *Laurent Bucyibaruta* and *Wenceslas Munyeshyaka*, whose cases were referred by the International Criminal Tribunal for Rwanda to France. In Rwanda, the *Uwinkindi* and *Munyagishari* cases are currently on appeal and trial proceedings are ongoing in the *Ntaganzwa* case. In France, the *Bucyibaruta* case continues to be in the investigative/pretrial phase, while an appeal is pending before a *chambre de l'instruction* in relation to the *Munyeshyaka* case after the case was dismissed in 2015 by French investigative judges. The Mechanism receives regular reports for these five cases from monitors who follow the proceedings in these cases, as further detailed below. In addition, the case of one individual indicted by the International Tribunal for the Former Yugoslavia, Vladimir Kovačević, was referred to Serbia by that Tribunal in March 2007. After the referral, the proceedings were suspended following a determination that the accused was unfit to stand trial. The Mechanism has continued to monitor for any changes in the status of this referred case.

32. Between 1 January 2016 and 13 April 2018, the President issued 10 decisions concerning cases referred to national jurisdictions and the Appeals Chamber issued 9 decisions.

33. The activities of the Mechanism in relation to cases referred to national jurisdictions are expected to continue for the duration of such cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. In Rwanda, the *Uwinkindi* and *Munyagishari* cases are currently on appeal — six and five years, respectively, since their transfer there — suggesting that the *Ntaganzwa* case and the cases of the remaining fugitives whose cases have been referred to Rwanda should they be arrested may take as long to complete depending upon the scope and progress of the proceedings. The two cases referred to France are at the investigative/pretrial phase. Further estimates for the continuation of the Mechanism's monitoring function with respect to France will be dependent on decisions of the French judicial authorities in these cases.

6. Enforcement proceedings

34. The President is responsible for supervising the enforcement of sentences, including issuing orders designating the State of enforcement for convicted persons and ruling on requests for early release and similar relief. During the review period and as at 13 April 2018, the President had issued a total of 48 decisions and orders (15 Arusha branch and 33 The Hague branch) related to the enforcement of sentences, including requests for early release, orders designating a State in which a convicted person shall serve his or her sentence and requests for transfers to another enforcement State. The President is currently seized of a number of confidential enforcement matters. Because of the case-specific nature of the issues involved and the dependence on State cooperation in relation to most of these cases, it is difficult to estimate the length of time necessary to resolve these matters.

35. As set forth in the report of the Secretary-General of 21 May 2009, it is not possible to foresee when, and how often, requests for pardon and commutation of sentence will arise. Nevertheless, in that same report, it was suggested that, in general terms, such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals and that the level of work involved will inevitably decrease over time. In that same report, the two Tribunals estimated that applications for commutation of sentence, pardon or early release could be anticipated until at least 2027 for cases of the International Tribunal for the Former Yugoslavia and until around 2030 for the International Criminal Tribunal for Rwanda. While the

Mechanism is generally in agreement with the above, the 2009 estimate requires an adjustment, given the fact that several individuals currently serving life sentences will not be eligible to apply for consideration of pardon, commutation of sentence or early release until at least 2035, even if they may seek such relief before that time.

36. It is expected that the activities of the President in relation to the supervision of the enforcement of sentences will continue until the last prison sentence has been served, subject to rule 128 of the Rules of Procedure and Evidence, which provides that the Mechanism will supervise sentences of imprisonment during the period of its functioning and that the Security Council may designate a body to assist it and to proceed to supervise the sentences after the Mechanism legally ceases to exist.

7. Other judicial workload

37. The Mechanism was responsible for substantial judicial activity during the review period, in addition to the functions described above.

38. In connection with his responsibility to coordinate the work of Chambers, the President issued 190 assignment orders during the review period: 96 in 2016, 73 in 2017 and 21 in the first three-and-a-half months of 2018. In total, 74 matters arising at the Arusha branch and 116 arising at the branch in The Hague were assigned to benches or single judges, as appropriate. In addition to those matters described above, the President is also responsible for the administrative review of Registry decisions and certain other miscellaneous requests for relief. During the review period, the President issued 43 decisions or orders related to administrative review or other miscellaneous matters, including 10 in 2016 (3 Arusha branch and 7 The Hague branch), 12 in 2017 (2 Arusha branch and 10 The Hague branch) and 11 at The Hague branch in the first three-and-a-half months of 2018. This judicial activity is expected to continue in future bienniums in step with the levels of other judicial activity described in the present report.

39. In addition to appeals from judgment and review proceedings, the Appeals Chamber is responsible for considering appeals from decisions of a Trial Chamber or a single judge. During the review period, the Appeals Chamber considered appeals in relation to decisions on contempt matters, review decisions and, as discussed above, requests for revocation of referral. The Appeals Chamber is expected to continue such judicial activity in line with the levels of judicial activity of the Trial Chambers and single judges.

40. Finally, single judges are responsible for dealing with a wide variety of requests in the first instance pursuant to article 12 (1) of the statute. During the review period, and in addition to requests related to contempt of court and false testimony, single judges have addressed, inter alia, requests related to the variation of witness protection measures, access to materials, disclosure, changes in classification of documents, requests for compensation, and assignment of counsel. The majority of matters before single judges relate to requests for access to confidential material for use in cases before national jurisdictions or in proceedings before the Mechanism.

41. Single judges issued 173 decisions or orders (95 Arusha branch and 78 The Hague branch) in 2016 and 99 (34 Arusha branch and 65 The Hague branch) in 2017. Single judges issued 38 decisions or orders (9 Arusha branch and 29 The Hague branch) in the first three-and-a-half months of 2018. It is expected that judicial activity before single judges will remain constant over the next several years, in particular, in view of ongoing national proceedings related to cases heard before the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism, and requests from convicted persons in relation to potential requests for review.

B. Other activities

42. In addition to his judicial duties, the President was responsible for a range of supervisory and representational activities during the review period, including addressing matters related to conditions of detention and the relocation of acquitted and released persons, serving as chair of the Mechanism Coordination Council, reporting to the General Assembly and the Security Council and communicating with external and diplomatic stakeholders.

43. During the review period, the President also presided over two plenaries of the judges, one conducted in person and, more recently, one conducted by remote written procedure, which addressed issues pertaining to the diverse approaches of civil and common law systems, as well as proposed amendments to certain rules of the Rules of Procedure and Evidence and the amendment of the Code of Professional Conduct for the Judges of the Mechanism to include a disciplinary mechanism for the judges. The adoption of a disciplinary mechanism by the Mechanism's judges draws upon best practices in the field and reflects a significant milestone for the institution. The elaboration of this disciplinary mechanism is also responsive to a recommendation given by OIOS in the context of its evaluation of the International Tribunal for the Former Yugoslavia.

44. In addition, and in consultation with the Prosecutor and the Registrar, the President promulgated a number of practice directions and oversaw the further development of the Mechanism's legal and regulatory framework (see enclosure 1).

C. Evaluation of the Office of Internal Oversight Services

45. As OIOS found in its report on the evaluation of the methods and work of the Mechanism, the Chambers systematically planned for and transformed its organizational structure and working methods to maximize the full capacity of a leaner staff size with financial prudence. OIOS further found that Chambers management optimized work flow and hired individuals who fit the work culture, establishing a seamless integration between Arusha and The Hague, and enabling staff to support remote judges to their "great satisfaction" (S/2018/206, para. 19). According to OIOS, all survey respondents and interviewees from the Chambers indicated that they communicated and collaborated well, within and across branches, and reported high satisfaction with working methods and conditions. With regard to remote judging in particular, OIOS deemed the model efficient and innovative, while noting that judges nonetheless experienced some drawbacks, including absorbing the burden of administrative costs and technological challenges, limited in-person collegial interaction, challenges with regard to diplomatic immunity, and potential risks to data security and confidential information related to remote work. The Chambers is already taking steps to address these drawbacks to the extent possible, including with regard to the data security risks highlighted by OIOS.

III. Prosecutor[4]

46. In accordance with article 14 of the statute, the Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute and acts independently as a separate organ of the Mechanism. The Office of the Prosecutor supports the Prosecutor in the execution of his or her functions and responsibilities.

[4] The present section reflects the views of the Prosecutor of the Mechanism.

47. During the review period, the Office of the Prosecutor focused on three priorities: (a) the expeditious completion of trials and appeals; (b) locating and arresting the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting international crimes committed in the former Yugoslavia and in Rwanda. The Office further carried out its responsibilities in relation to a number of other residual functions as mandated by the statute.

48. The Office of the Prosecutor has undertaken all efforts to manage its staff and resources in line with the instructions of the Security Council. As OIOS found in its report on the evaluation of the methods and work of the Mechanism, the Office of the Prosecutor "was [...] effective in planning, restructuring and refining its operational methods to respond to the mandate for a lean and cost-effective organization" (S/2018/206, para. 22).

A. Expeditious completion of trials and appeal

49. During the review period, the Office of the Prosecutor faced "an unexpectedly high level of judicial activity" (S/2018/206, p. 10) with the commencement of its first trial and appeals proceedings arising out of cases transferred from the International Tribunal for the Former Yugoslavia in accordance with the transitional arrangements.

50. On 15 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia partially granted the appeal of the Office of the Prosecutor in the *Stanišić and Simatović* case, revoked the Trial Chamber's judgment and ordered the case to be retried on all counts. Pursuant to the statute and the transitional arrangements, the retrial is being conducted by the Mechanism. Following an intense period of pretrial work, the trial commenced on 13 June 2017.

51. The Office has also litigated three appeals proceedings following the issuance of trial judgments by the International Tribunal for the Former Yugoslavia.

52. On 24 March 2016, a Trial Chamber of the Tribunal unanimously convicted Radovan Karadžić of genocide, crimes against humanity and war crimes, and sentenced him to a term of imprisonment of 40 years. On 5 December 2016, the Office of the Prosecutor filed its appeal brief against the trial judgment. The Office identified four grounds of appeal, including against the acquittal for genocide in 1992 and the imposed sentence. The Defence also filed its appeal brief, which set out 50 grounds of appeal. The Office completed the written appeal briefing in the case on 6 April 2017 and has been intensively engaged in its preparations for the oral appeal hearing, which is now scheduled to take place on 23 and 24 April 2018.

53. On 31 March 2016, a Trial Chamber of the Tribunal, by majority, acquitted Vojislav Šešelj on all counts of the indictment. The Office of the Prosecutor filed its appeal brief on 18 July 2016. The Office put forward two grounds of appeal, arguing that the Trial Chamber erred in law by failing to deliver a reasoned judgment and that the Trial Chamber erred in fact by acquitting the accused. The Office completed the written appeal briefing in the case on 22 February 2017. The oral appeal hearing took place on 13 December 2017 and an appeal judgment was delivered on 11 April 2018. The Appeals Chamber of the Mechanism granted the Office's appeals in part, reversed the Trial Chamber's acquittal in part and entered convictions for instigating persecution (forcible displacement), deportation and other inhumane acts (forcible transfer) as crimes against humanity and for committing persecution (violation of the right to security) as a crime against humanity.

54. On 22 November 2017, a Trial Chamber of the Tribunal sentenced Ratko Mladić to life imprisonment for genocide, crimes against humanity and war crimes. On

22 March 2018, the Office of the Prosecutor filed its notice of appeal against the trial judgment. The Office identified two grounds of appeal. The Defence also filed its notice of appeal, which set out nine grounds of appeal. The Office has already begun preparing its written appeal brief, which will be followed by its response to the Defence appeal brief and reply brief.

55. The Office of the Prosecutor has consistently explored all reasonable measures within its control to expedite the completion of these trial and appeals proceedings. It is, however, ultimately for the respective Chambers to manage the proceedings and set appropriate deadlines for the parties and themselves.

56. In addition to trial and appeals activity in The Hague, the Office has been undertaking a high volume of case-related litigation at both branches, particularly as a result of attempts by convicted persons to obtain review and ultimately revocation of their convictions entered by either of the Tribunals. These defence efforts generate extensive litigation in seeking access to evidence or the files of other cases in order to identify "new" evidence in support of a review motion, and in relation to the review motions themselves.

57. The Office notes that during the review period, and particularly in 2017, there was an increase in review and related litigation at the Arusha branch. As review and related litigation will be initiated by the defence in these circumstances, the Office is unable to suggest whether and for how long this trend will continue.

B. Fugitives

58. Eight fugitives indicted by the International Criminal Tribunal for Rwanda remain at large. During the review period, the Office of the Prosecutor continued its efforts to locate and arrest the three fugitives whose cases will be tried by the Mechanism: Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The Office also continued the search for information on the whereabouts of the five fugitives who are currently expected to be brought to trial in Rwanda: Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Ryandikayo and Phénéas Munyarugarama.

59. The Office of the Prosecutor directed its efforts towards reforming and strengthening its fugitive-tracking activities. The Office completed a comprehensive review of its tracking activities, which led to the adoption of a series of measures to resolve the challenges identified. In addition to reviewing, following up and closing leads that had been generated in the past, the Office restructured its tracking team to match its structure and capacities with the activities needed to move the search for the remaining fugitives forward. The restructuring has now been completed with the establishment of the Fugitives and Investigations Unit.

60. The Office additionally established two task forces focused on Africa and Europe, respectively, to coordinate efforts with the International Criminal Police Organization (INTERPOL) and national law enforcement partners. The Office hosted a meeting of the task force focused on Africa to identify contact points and methods of communication, and hosted a meeting of the task force focused on Europe to review intelligence that had been gathered and identify necessary follow-up.

61. Aware that locating and arresting the remaining fugitives depends on securing the cooperation of State authorities, the Office also strengthened its diplomatic engagement, as well as public communication and outreach. The Prosecutor undertook extensive efforts to raise awareness of the Office's mandate to locate and arrest the remaining eight fugitives, in particular with its professional counterparts in Africa. As part of these efforts, the Prosecutor attended the 2016 annual meeting of

the Africa Prosecutors Association and briefed national chief prosecutors on the Office's work and on the assistance that is needed from national justice authorities.

62. The Office underscores its commitment to arresting the remaining fugitives as soon as possible. As a reflection of that commitment, the Office has stated its position that fugitive tracking should be regarded as an ad hoc function, as the Office believes that fugitive tracking is a temporary activity that must be brought to a close in a reasonable time period, consistent with other ad hoc functions of the Mechanism. The Office is further convinced that, when determining how long fugitive tracking will continue to be needed as an ad hoc function, it is necessary to consider not only how many fugitives remain at large, but also the results that are being achieved. The Office cannot continue tracking fugitives ad infinitum. As the Office previously reported to the Security Council in its tenth progress report (S/2017/434), if a track record of success is not demonstrated within the next few years, it will be necessary, for operational reasons alone, to seriously consider fully transferring fugitive-tracking responsibilities to national authorities.

C. Assistance to national war crimes prosecutions

63. With the closure of both Tribunals, further accountability for crimes committed in Rwanda and the former Yugoslavia now entirely depends on national justice sectors. The Office of the Prosecutor places a high priority on monitoring, supporting and advising national judicial authorities prosecuting war crimes cases arising out of the conflicts in Rwanda and the former Yugoslavia. The Office maintains an ongoing dialogue with counterparts, and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.

64. Among the measures taken, the Office ensures that its national counterparts have access to the information and evidence they need to successfully complete national proceedings. The Office possesses invaluable evidence and expertise that can greatly benefit national justice efforts. The evidence collection related to the former Yugoslavia comprises more than 9 million pages of documents and thousands of hours of audio and video records, most of which were not introduced into evidence in any proceedings of the International Tribunal for the Former Yugoslavia and thus are only available from the Office of the Prosecutor. The evidence collection related to Rwanda comprises more than 1 million pages of documents.

65. During the review period, the Office of the Prosecutor continued to receive a high volume of requests for assistance from national judiciaries and international organizations. While the majority of requests were processed by the Mechanism's Office of the Prosecutor, the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia retained responsibility for processing requests for assistance in relation to its final cases until its closure last year. For ease of reporting, information is provided below on the total number of requests for assistance received by both Offices.

66. In relation to the former Yugoslavia, the Office of the Prosecutor received 714 requests for assistance from nine Member States and six international organizations: 512 requests were submitted by authorities in Bosnia and Herzegovina, 33 were from Serbia and 95 were from Croatia. In total, the Office handed over 20,213 documents. In addition, the Office filed submissions in relation to 49 requests for the variation of witness protective measures, of which 48 concerned proceedings in Bosnia and Herzegovina and 1 concerned proceedings in Serbia. The Office additionally filed submissions in relation to 36 requests for information regarding applicable witness protection measures, all of which concerned proceedings in Bosnia and Herzegovina.

67. The Office of the Prosecutor anticipates that it will continue to receive a high volume of requests and a high number of complex requests for at least the next five-year period. Beginning in 2014, the annual number of requests received increased from approximately 200 per year to 300 per year. That high rate continued during 2015, 2016 and 2017. In addition, the requests received by the Office have become increasingly complex. The Office notes that outside factors strongly suggest that the high volume and complexity of requests will continue and likely further increase in the coming five-year period. In Bosnia and Herzegovina, the revised national war crimes strategy, which is expected to be adopted in the coming months, sets 2023 as the deadline for completing the remaining backlog of approximately 3,000 cases. Achieving meaningful progress towards this ambitious target will require a significant increase in investigations and prosecutions at all levels, with a concomitant significant increase in requests for assistance to the Office. Similarly, in Serbia the national war crimes strategy and the prosecutorial strategy for the investigation and prosecution of war crimes in Serbia for the period 2018–2023 foresee a significant increase in investigations and prosecutions in Serbia over the coming five years. The Serbian Office of the War Crimes Prosecutor has reported that there are at least 800 cases that remain to be processed, and has indicated that obtaining evidence from the Office of the Prosecutor of the Mechanism through requests for assistance will be essential to achieving its targets. The Office also expects that judicial authorities in other countries, including Croatia and Montenegro, will continue to submit the same number of or more requests for assistance in the coming five years. Finally, the Office of the Prosecutor notes that increased judicial activity in the countries of the former Yugoslavia creates additional workload for the Office not only in relation to requests for assistance, but also in respect of related litigation with regard to the variation of witness protective measures. The Office undertakes this latter litigation in support of its national counterparts to enable them to access important evidence that is protected by judicial order of the Mechanism or the International Tribunal for the Former Yugoslavia.

68. In relation to Rwanda, during the period under review, the Office of the Prosecutor received 23 requests for assistance from eight Member States. All requests have been processed. In total, the Office handed over 25,003 pages of documentation. In addition, the Office filed submissions in relation to three requests for the variation of witness protection measures.

69. The Office of the Prosecutor anticipates that, over the next few years, there will be an increase in the volume of requests for assistance in relation to its evidence collection related to Rwanda. During the review period, the Office of the Prosecutor deepened its cooperation with Rwandan authorities in support of their efforts to bring suspects to trial in Rwandan courts, including by providing evidence and case-specific expertise when requested. The Office will also soon initiate a project to improve the access of Rwandan and other national authorities to the evidence collection related to Rwanda by redacting material so that it can be more readily provided to national judiciaries and by establishing an electronic, searchable database that can be remotely accessed, as is already the case for the collection of evidence related to the former Yugoslavia. The Office anticipates that these measures will further increase the volume of requests for assistance.

70. Within existing resources, during the review period the Office of the Prosecutor continued to monitor the five cases referred by the International Criminal Tribunal for Rwanda, under rule 11 *bis* of the Rules of Procedure and Evidence, to the national courts of France and Rwanda.

D. Management

71. Consistent with its commitment to managing its staff and resources in line with the instruction of the Security Council that the Mechanism be a small, temporary and efficient structure, during the review period the Office of the Prosecutor implemented a series of measures to streamline its operations and reduce costs.

72. An important development in this respect was the implementation of the "one office" policy to integrate staff and resources of the Office of the Prosecutor of the Mechanism with those of the International Tribunal for the Former Yugoslavia. Until the closure of that Tribunal, all staff of the Offices of the Prosecutor were available to "double-hat" so that they could be flexibly assigned to work related to either the Mechanism or the Tribunal depending on operational requirements and their case-related knowledge.

73. The "one office" approach generated efficiencies and overall cost savings. For example, following the judgment of the Appeals Chamber of the Tribunal in December 2015 ordering a retrial in the *Stanišić and Simatović* case, the Office of the Prosecutor of the Mechanism was able to reassign existing staff of the Mechanism and the Tribunal with case-specific knowledge to carry out the pretrial work in this case. By reassigning existing staff without conducting recruitment exercises, the Office was able to prevent possible delays in commencing the necessary work. Moreover, as this reassignment was absorbed within existing resources for a significant period of time, the Office was able to delay establishing additional posts and incurring related costs.

74. In addition to the "one office" policy, during the review period the Office of the Prosecutor continued to maximize its resources and "do more with less" through extensive multitasking and cross-training. For example, litigation assistants assigned to support appeals activity were cross-trained on requests for assistance so that they could also support this work, thereby reducing the total number of staff required to meet the Office's workload. The Office also utilized rosters and internal transfer arrangements to efficiently recruit a limited number of temporary staff as necessary to undertake its ad hoc functions.

E. Evaluation of the Office of Internal Oversight Services

75. In its report on the evaluation of the methods and work of the Mechanism, OIOS concluded with respect to the Office of the Prosecutor specifically that the Office "operated with a lean staff and integrated working methods, but friction between management and staff and an unexpectedly high level of judicial activity amid organizational downsizing negatively impacted staff morale" (S/2018/206, p. 10).

76. OIOS made a number of findings demonstrating that it had positively assessed the methods of the Office and its work overall. Regarding the adherence of the Office to the Security Council vision of the Mechanism as "a small, temporary and efficient structure", OIOS concluded that the Office "was also effective in planning, restructuring and refining its operational methods to respond to the mandate for a lean and cost-effective organization. As a result, it operated with a small staff and tight resources." OIOS noted in particular that the Office's "one office" policy, adopted in March 2016, "eliminated time-consuming recruitment exercises, permitted the retention of specialized knowledge and allowed the Office to draw on available resources to manage its judicial workload while maintaining a small structure" (S/2018/206, para. 22). OIOS further favourably assessed the implementation by the Office of governance across both branches, noting that "survey responses indicated

that staff found cross-branch coordination within the [Office] to be effective" (S/2018/206, para. 21).

77. However, OIOS also found that the Office "encountered difficulties related to recruitment, retention and job security, due in part to the temporary nature of judicial activities and the limited pool from which staff were recruited". OIOS further noted that "already-stretched Office teams had to work simultaneously on outstanding cases [of the International Tribunal for the Former Yugoslavia], an unforeseen retrial and unexpected litigation arising out of completed Mechanism cases" (S/2018/206, para. 23). OIOS accordingly recommended that the Office should "support and strengthen staff morale through conduct of a survey to identify key concerns to manage downsizing and upsizing. [The Office] should identify the root causes of low morale to enable better planning for the likely effects of such changes" (S/2018/206, para. 44).

78. The Office of the Prosecutor accepted the recommendation of OIOS and has already begun planning to carry out a survey of staff morale, analyse the results and develop strategies to manage institutional changes.

79. The Office of the Prosecutor is grateful for the report and recommendations of OIOS. The Office is pleased that its commitment to the Security Council vision of the Mechanism as "a small, temporary and efficient structure" was recognized, and that OIOS favourably assessed the Office's strategies and innovative methods, including the "one office" policy, to operate with a small staff and tight resources. The Office welcomes the helpful analysis by OIOS of the challenges in staff morale that result from maintaining its lean and cost-effective structure despite an unexpectedly high level of judicial activity amid organizational downsizing, and will implement the recommendation of OIOS in that regard.

IV. Registry

80. In accordance with the statute, the Registry is responsible for the administration and servicing of the branches of the Mechanism. More specifically, under the leadership of the Registrar, the Registry is responsible for carrying out a number of key functions. Besides the provision of support to judicial activities and court operations, including interpretation and translation, these functions range from the protection of victims and witnesses to the preservation and management of the archives, and also include the provision of administrative and other support to the Chambers and the Prosecutor so as to ensure the effective and efficient operation of the Mechanism.

81. Following the closure of the International Criminal Tribunal for Rwanda in December 2015 and of the International Tribunal for the Former Yugoslavia in December 2017, the Registry assumed responsibility for all remaining functions previously carried out by the registries of those Tribunals, including in support of the Mechanism during the period of their coexistence. These include, from the date of closure of the respective branch, management of the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, provision of security in both branches and performance of all administrative functions, including everything from human resources and facilities maintenance to finance, payroll and procurement. The Registry also provided administrative support for the finalization of the liquidation of the International Criminal Tribunal for Rwanda, which was completed in 2016, and in 2018 is supporting the finalization of the liquidation of the International Tribunal for the Former Yugoslavia. As part of the liquidation of the latter Tribunal, the Registry has closed the Belgrade field office and now maintains only one field office per branch: one in Kigali and one in Sarajevo. The Registry has

continued to maximize efficiencies by encouraging staff in its two branches, wherever possible, to operate as part of a single organizational entity.

82. In December 2016, staff at the Arusha branch of the Mechanism moved into the new premises in Lakilaki, a new location that has been envisaged as becoming an East African legal and diplomatic hub. The courtroom and the library, which is one of the premier international law research resources in East Africa, have already welcomed a number of visitors, hosting an inaugural colloquium for national, regional and international judges, an event aimed at increasing public awareness of international and regional organizations based in Arusha and meetings of the International Council on Archives. Final work is under way to ensure that the environmental conditions in the new archives repositories meet the standards for the long-term preservation of records; archives of the International Criminal Tribunal for Rwanda will be relocated to the new facility as soon as the necessary work is completed.

A. Support for judicial activities

83. Throughout the review period, the Registry continued to provide support to all of the Mechanism's judicial activities. Among other tasks, to date the Registry has processed more than 4,681 judicial filings, managed court hearings on 121 sitting days, assigned and remunerated defence teams and provided over 40,000 pages of translations of judicial documents required to support ongoing judicial work. Since the closure of the International Tribunal for the Former Yugoslavia, the Registry has also been responsible in both branches for providing interpretation and court-reporting services to support the judicial activities of the Mechanism.

84. Additionally, the Registry has continued to support the Mechanism's monitoring of cases referred to national jurisdictions with the assistance of the Kenyan section of the International Commission of Jurists. Three cases referred to Rwanda by the International Criminal Tribunal for Rwanda are currently being monitored through regular visits to the accused persons in prison and attendance at hearings by the monitors. Pending the conclusion of a similar monitoring agreement for the two International Criminal Tribunal for Rwanda cases referred to France, the Registry has ensured continued monitoring through interim monitoring arrangements.

85. During the review period, the Registry also finalized a full range of policies covering the legal aid system of the Mechanism, as well as guidelines for determining the indigency of applicants for legal aid, and established best practices for counsel providing pro bono legal advice to convicted persons, including a formalized recognition of such counsel, in order to enhance transparency and ensure qualified legal representation in all proceedings before the Mechanism. Since 1 January 2016, the Registry has provided legal and administrative assistance to 10 defence teams receiving Mechanism-funded remuneration and 51 pro bono teams, comprising a total of approximately 150 defence team members. It further administered the remuneration of four amici curiae teams engaged in contempt investigations and proceedings.

86. Reductions undertaken pursuant to the expenditure reduction plan leave only a bare minimum of staff in the Registry to support courtroom functions, and the illness or unexpected absence of an interpreter, courtroom officer, witness protection officer or other essential courtroom personnel, such as audiovisual technicians and security personnel, means that court sessions, including in the ongoing *Stanišić and Simatović* case, may have to be delayed.

87. Furthermore, given the implementation of the expenditure reduction plan, the increased strain on the limited resources of the reduced Language Support Services staff will result in delays of necessary translations for court proceedings. Staff

reductions in Language Support Services will delay the completion of translation of the *Mladić* trial judgment into Bosnian/Croatian/Serbian by several months, which risks delaying the *Mladić* appeal proceedings. Translations of the *Prlić et al.* and *Šešelj* appeal judgments into Bosnian/Croatian/Serbian can only begin thereafter.

88. More generally, the Registry will continue to provide this support to the President, the judges and the Prosecutor for as long as the judicial activities of the Mechanism require.

B. Protection of victims and witnesses

89. Pursuant to article 20 of its statute, the Mechanism is responsible for the protection of the witnesses who have testified in cases completed by the two Tribunals, as well as those witnesses who have appeared or may appear before the Mechanism. In practice, this entails the protection and support of thousands of witnesses by the Witness Support and Protection Unit of the Mechanism.

90. The Unit has ensured that witnesses continue to receive the same level of protection and security that was previously offered by the Tribunals, consistent with judicial protection orders and in close collaboration with domestic authorities and other United Nations entities. The Unit has also ensured and continued to strengthen the safekeeping of confidential witness information. Whenever required, it has assisted with requests for the rescission, variation or augmentation of witness protection measures.

91. At the Arusha branch, the Unit provides ongoing support services to witnesses, including medical and psychosocial care to victims and witnesses residing in Rwanda, particularly those living with HIV/AIDS as a result of crimes committed against them during the genocide.

92. At The Hague branch, the Unit has supported witness activity in the retrial of the *Stanišić and Simatović* case. As at 13 April 2018, the Unit had facilitated the testimony of 37 witnesses in this case during the review period. Protection and support services are also ongoing for victims and witnesses involved in previous trials.

93. Further reductions in the staffing levels of the witness protection and support teams may jeopardize the provision of ongoing protection services owing to an inability to expeditiously address all security matters requiring assessment. There is likewise a risk of delays in trial hearings if witness protection staff are not available to provide psychosocial support and counselling to witnesses prior to testifying.

94. It is expected that victim and witness protection will be required in future bienniums, in step with the judicial protection orders covering approximately 3,150 victims and witnesses that must continue to be implemented unless rescinded or waived. It is difficult to assess precisely how long the victim and witness protection function would need to remain operational. The provision of support may be required until the last victim or witness is deceased or, where applicable, until the cessation of protective measures covering a victim's or witness's immediate family members. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased.

C. Archives and records management

95. Pursuant to article 27 of its statute, the Mechanism is responsible for the management of, including preservation of and access to, the archives of both of the Tribunals and of the Mechanism.

96. The initial focus of the Mechanism Archives and Records Section has been the coordinated transfer of custody of the Tribunal archives to the Mechanism, which was completed by the respective closure dates of the Tribunals. The Mechanism is now responsible for the management of more than 4,000 linear metres of physical records and two petabytes of digital records.

97. The Mechanism Archives and Records Section provides secure storage for these records. The construction of the archives building in Arusha, specifically designed to safeguard and preserve the archives of the International Criminal Tribunal for Rwanda and the Mechanism at the Arusha branch, was completed and work is currently under way to ensure that the environmental conditions in the repositories meet the standards for the long-term preservation of physical records. The physical repositories at the branch in The Hague need to be improved to meet standards for the long-term preservation of physical records. It is anticipated that this will be done in the coming years, subject to the availability of resources. In late 2017, the implementation of a digital preservation system specifically designed to maintain the long-term integrity, reliability and usability of the digital archives was completed. The complex work necessary to ingest the digital archives of the Tribunals into the system began immediately and will continue at both branches in the coming years.

98. The Mechanism continues to facilitate the widest possible access to records while ensuring the strictest protection of confidential information. This includes ongoing work to implement a fully searchable online judicial database, development of public exhibitions and participation in archives awareness-raising events.

99. As a result of the expenditure reduction plan, however, work to preserve a number of vulnerable records will be delayed, and these records will be at risk of permanent loss. Delays in providing access to records are also inevitable.

100. As the archives are by definition records deemed to be of long-term to permanent value, their management will have to be ensured accordingly.

D. Supervision of enforcement of sentences

101. Since the establishment of each branch and under the supervision of the President, the Registry has facilitated the enforcement of sentences pronounced by either of the Tribunals and by the Mechanism. Sentences are enforced within the territory of Member States that have concluded agreements to this effect or indicated their willingness to accept convicted persons under any other arrangement.

102. At the Arusha branch, the Mechanism is supervising the enforcement of 30 sentences in three States.[5] At the branch in The Hague, the Mechanism is doing so in respect of 16 sentences in nine States.[6] Furthermore, two convicted persons at the United Nations Detention Facility in Arusha and seven convicted persons at the United Nations Detention Unit in The Hague are awaiting transfer to an enforcement State.

[5] Benin, Mali and Senegal.

[6] Denmark, Estonia, Finland, France, Germany, Italy, Norway, Poland and Sweden.

103. The Registry has continued to implement existing enforcement agreements. At the same time, the Registry has made significant efforts to expand the enforcement capacity of the Mechanism, concluding revised enforcement agreements with Mali on 13 May 2016 and Benin on 12 May 2017. Additionally, the Registry has fostered close cooperation with relevant authorities in the enforcing States, facilitated inspections by highly reputable international monitoring bodies and coordinated the actions of partners on the ground, as required. The Mechanism has also engaged an expert on ageing in prison and associated vulnerabilities who, in March 2018, inspected the prison conditions of the persons convicted by the International Criminal Tribunal for Rwanda who are serving sentences in Mali and Benin and will issue recommendations to the Mechanism.

104. It is expected that the supervision of the enforcement of sentences, carried out under the authority of the President, will be required in future bienniums, until the last prison sentence has been served, subject to rule 128 of the Rules of Procedure and Evidence, as set forth above.

E. Assistance to national jurisdictions

105. Since 1 January 2016, the Registry has received and responded to over 630 requests for assistance by national authorities or parties to national proceedings in connection with domestic proceedings related to the genocide in Rwanda or the conflicts in the former Yugoslavia. So as to facilitate the efficient handling of such requests, the Registry has produced and made available on the Mechanism's website comprehensive information and guidance related to this function.

106. Nevertheless, as a result of the expenditure reduction plan, delays in providing access to records in response to requests from national jurisdictions are inevitable.

107. Finally, the Registry has experienced an increase in the number of requests for assistance over the past two years, consistent with the experience of the Office of the Prosecutor. A high demand for requests for assistance is expected to continue over the next bienniums.

F. Relocation of acquitted and released persons

108. During the reporting period, the Mechanism was responsible for the upkeep and relocation of 14 acquitted and released persons. In 2016, one acquitted individual was relocated to a European country through private relocation efforts, with the support of the Mechanism. Also in 2016, thanks to the invaluable cooperation of a Member State and through diplomatic efforts undertaken by the Registry, the Mechanism successfully relocated one acquitted person and one released person to an African country. The number of acquitted and released persons for whom the Mechanism has the responsibility for upkeep and assistance with their relocation therefore stands at 11.

109. The Mechanism anticipates that this humanitarian challenge will remain until all 11 individuals are relocated, and is grateful for the support of the Security Council and the international community towards its resolution.

G. Budget, staffing and administration

110. During the initial period and while it coexisted with the Tribunals, the Mechanism retained only the minimal staffing levels necessary to perform mandated functions, greatly relying on the support of the Tribunals for a range of services and on extensive "double-hatting" arrangements. The Mechanism is grateful for the

support provided by the two Tribunals during the early years of the Mechanism's existence, which laid the foundation for a self-standing administration at the Mechanism that draws actively upon the processes, policy guidance and best practices of its predecessors.

111. By its resolution 72/258, the General Assembly approved a commitment authority in an amount not to exceed $87,796,600 gross for the maintenance of the Mechanism from 1 January to 31 December 2018. After a detailed review of the requirements for 2018, including the implementation of an expenditure reduction plan, the Mechanism concluded that the approved commitment authority would not be sufficient to carry out the functions mandated by the Security Council, including trials and appeals through to the end of 2018. Based on the funding gap and operational risks generated by the current situation, it was concluded that it would be necessary to seek additional funding by submitting a revised budget proposal for the consideration of the Assembly at the second part of its resumed session, rather than during the fall of 2018. The revised proposed budget for the biennium 2018–2019 (A/72/813) was considered by the Advisory Committee on Administrative and Budgetary Questions on 6 April 2018 and is expected to be considered by the General Assembly in May 2018.

112. In order to implement the decision of the General Assembly pending the consideration of a revised budget proposal for the biennium 2018–2019,[7] the Registry developed and is implementing the expenditure reduction plan to allow the Mechanism to fulfil the core elements of its mandate — mainly judicial activity — to the greatest extent possible within the commitment authority granted. As a result of this plan, reductions are being made in both post and non-post resources, as discussed above. While reductions are being made at both branches, the great majority of reductions are at the branch in The Hague.

113. Such staffing reductions under the expenditure reduction plan carry significant operational risks, such as delayed mandate implementation, delayed or diminished service provision and the non-implementation of planned activities, as highlighted above.

114. In order to manage the post reductions, the Registrar requested its joint negotiating committee, which serves as an advisory body to the Registrar and is comprised of management and staff union representatives, to develop a proposal for a streamlined downsizing policy for exigent circumstances. This downsizing policy has been adopted and its implementation is currently under way.

115. The expenditure reduction plan also provides for reductions of non-post resources to the greatest extent possible: general operating expenses have been significantly decreased through measures such as reducing access to the premises by evening and weekend staff, reconfiguring the housing of staff at the premises in The Hague to reduce the number of floors in use, thereby saving on the costs of utilities and services, and revising arrangements for the delivery of other services such as information technology, internal mail delivery and cleaning services. Similarly, enhancements to the premises of the Mechanism are now limited to those which are strictly necessary to respond to security or health and safety concerns. The Mechanism's vehicle holdings have been reviewed and no provision has been made in the revised budget for the acquisition of any new vehicles.

[7] In the light of the current budget situation, cost-related information has not been supplied in the context of the present report but will be provided insofar as possible in the Mechanism's forthcoming six-monthly report.

116. Finally, detention-related requirements have been adjusted to reflect intervening developments, such as the transfer of convicted persons to designated enforcement States, and the minimum operational needs at both branches.

117. As at 13 April 2018, 166 of the 177 previously approved continuous posts had been filled to carry out the Mechanism's continuous functions. An additional 351 personnel were also serving as general temporary assistance to assist with ad hoc needs, including judicial work and litigation. These positions are short-term in nature and the number may fluctuate depending on the relevant workload. Continuous and general temporary assistance positions with the Mechanism are filled by nationals of 74 States. Approximately 88 per cent of the Mechanism's staff have previously worked at one or both of the tribunals. As 52 per cent of current staff at the professional level are female, the Mechanism has surpassed the gender parity goals of the Secretary-General, as it has done consistently since its inception.

118. Rosters established at all three organs of qualified staff at each level continue to be maintained and updated, to allow for quick recruitment of staff in the event of the apprehension of a fugitive.

H. Other activities

119. In addition to the functions and responsibilities identified above, the Registry engaged in a number of other activities in support of the Mechanism's mandate during the review period. These activities include developing and maintaining relations with relevant external stakeholders and informing the public about the work of the Mechanism, including through its website, social media channels, support to the media, the organization of public events and the production of informational material. These activities have been significantly reduced as a result of the expenditure reduction plan. The staff reductions may contribute to a lack of understanding by the general public of the mandate of the Mechanism and its ongoing judicial work.

I. Evaluation of the Office of Internal Oversight Services

120. The Registry is grateful to OIOS for its report and recommendations, and is committed to the implementation of the recommendations. The Registry is pleased that the OIOS evaluation recognized the progress made towards realizing its mandate as a small and efficient institution, and its operational innovations in terms of workflow and streamlined organizational structures. The Registry remains committed to closing any gaps in inter-branch coordination highlighted by the evaluation, and will continue to strive to ensure that administrative units service both branches equally. The Registry is also committed to completing the major institution-building projects examined by the evaluation, subject to the availability of resources. The Mechanism is at the forefront in the United Nations system in meeting or exceeding the gender parity goals of the Secretary-General, and remains committed to addressing any remaining gaps. Similarly, and further to an OIOS recommendation, the Registry will explicitly reflect gender-sensitive and gender-appropriate practices in the updated witness management governance framework. Finally, the Registry is committed to achieving further efficiencies in the processing of medical bills for convicted persons to ensure full conformity with international standards of detention and continues to take active measures in this regard. Further information concerning the steps envisaged in response to the OIOS recommendations is set forth in the management response to the OIOS report, annexed thereto.

V. Conclusion

121. During the review period, the Mechanism carried out its mandate in accordance with Security Council resolution 1966 (2010), providing necessary continuity with respect to essential functions transferred from both Tribunals. While it faced a period of heightened judicial activity during the review period, as well as a number of challenges, particularly in relation to its budgetary situation, the Mechanism continued to adapt as needed and to carry out the mandate entrusted to it to the highest possible standard while always remaining focused on conducting its operations in an efficient and cost-effective manner.

122. Throughout its existence, the Mechanism has received vital support from the Office of Legal Affairs and the Department of Management of the Secretariat, from the Netherlands, Rwanda, the United Republic of Tanzania and States of the former Yugoslavia, and from individual States Members of the United Nations. This support remains crucial to the success of the Mechanism as it proceeds to carry out and complete its functions.

Enclosure 1

Public legal and regulatory instruments and policies promulgated by the Mechanism, as at 13 April 2018*

I. Rules of Procedure and Evidence

Rules of Procedure and Evidence (MICT/1/Rev.2), 26 September 2016

Practice Direction on Procedure for the Proposal, Consideration, and Publication of Amendments to the Rules of Procedure and Evidence of the Mechanism (MICT/16/Rev.1), 21 July 2016

Practice Direction on the Procedure for the Implementation of Rule 110 (B) of the Rules of Procedure and Evidence (MICT/15), 9 March 2016

II. Judges

Code of Professional Conduct for the Judges of the Mechanism (MICT/14/Rev.1), 9 April 2018

III. Judicial Activities

Interim Procedures on Restricted Access Filings, 28 February 2018

Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals (MICT/7/Rev.2), 24 August 2016

Practice Direction on the Use of the Electronic Court Management System (MICT/21), 2 November 2017

Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve his or her Sentence of Imprisonment (MICT/2 Rev.1), 24 April 2014

Practice Direction on Requirements and Procedures for Appeals (MICT/10), 6 August 2013

Practice Direction on Lengths of Briefs and Motions (MICT/11), 6 August 2013

Practice Direction on Formal Requirements for Requests for Review of Administrative Decisions (MICT/9), 23 April 2013

Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism (MICT/3), 5 July 2012

IV. Victims and Witnesses

Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material (MICT/8), 23 April 2013

* Pending adoption of the Mechanism's rules and regulations governing detection matters, the detention rules and procedures of International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia apply *mutatis mutandis* to individuals detained at the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, respectively.

Policy for the Provision of Support and Protection Services to Victims and Witnesses (MICT), 26 June 2012

V. Archives and Records

Access Policy for the Records Held by the Mechanism for International Criminal Tribunals (MICT/17), 12 August 2016

VI. Office of the Prosecutor

Prosecutor's Regulation No 1 (2013) Standards of Professional Conduct of Prosecution Counsel (MICT/12), 29 November 2013

Prosecutor's Regulation No 2 (2013) Requests for Assistance by National Authorities or International Organisations to the Prosecutor (MICT/13), 29 November 2013

VII. Defence

Remuneration Policies for Persons Representing Indigent Accused: Revised Amounts as of January 2018, 8 February 2018

Hourly Payment Rates Applicable to Defence Teams as of January 2018, 1 January 2018

Guidelines for Determining the Extent to Which an Applicant for Legal Aid is Able to Remunerate Counsel, 13 November 2017

Remuneration Policy for Persons Representing Indigent Convicted Persons in Post-Conviction Proceedings, upon Issuance of a Judicial Order Granting Assignment of Counsel at the Expense of the Mechanism for International Criminal Tribunals, 28 September 2017

Remuneration Policy for Persons Representing Indigent Accused in Trial Proceedings before the Mechanism for International Criminal Tribunals, 8 December 2016

Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings Before the Mechanism for International Criminal Tribunals, 29 June 2016

Remuneration Policy for Persons Assisting Indigent Self-Represented Accused before the Mechanism for International Criminal Tribunals, 25 May 2016

Guidelines on the Submission of Hourly Invoices and Remunerable Activities for Assistants to Self-Represented Accused, 25 May 2016

Remuneration Policy for Persons Representing Indigent Accused in Pre-Trial Proceedings before the Mechanism for International Criminal Tribunals, 22 March 2016

Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals, 21 March 2016

Guidelines on the Submission of Hourly Invoices and Remunerable Activities, 10 November 2015

Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism (MICT/6), 14 November 2012

Directive on the Assignment of Defence Counsel (MICT/5), 14 November 2012

VIII. Translation and Interpretation

Policy on Translation for the Conduct of Judicial Activity of the International Residual Mechanism for Criminal Tribunals (MICT/22), 5 April 2018

Policy on Interpretation (MICT/18), 2 November 2017

Code of Ethics for Interpreters and Translators Employed by the Mechanism for International Criminal Tribunals (MICT/20), 2 November 2017

Guidelines for Requesting and Working with Interpretation Services (MICT/19), 2 November 2017

Enclosure 2

Judgments, orders and decisions issued by the Mechanism, as at 13 April 2018

I. The President

A. Orders of the President assigning a single judge or bench

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	10	9	43	30	42	28	4	166
The Hague	0	16	27	31	54	45	17	190
Total	**10**	**25**	**70**	**61**	**96**	**73**	**21**	**356**

B. Orders and decisions of the President on enforcement

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	2	1	5	1	5	10	0	24
The Hague	0	2	13	18	16	14	3	66
Total	**2**	**3**	**18**	**19**	**21**	**24**	**3**	**90**

C. Orders and decisions of the President related to cases referred to national jurisdictions

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	2	2	4	4	4	6	0	22
The Hague	0	0	0	0	0	0	0	0
Total	**2**	**2**	**4**	**4**	**4**	**6**	**0**	**22**

D. Orders and decisions of the President (other)

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	2	5	2	0	3	2	0	14
The Hague	0	0	1	1	7	10	11	30
Total	**2**	**5**	**3**	**1**	**10**	**12**	**11**	**44**

II. The Appeals Chamber

A. Appeal judgments

	2012	2013	2014	2015	2016	2017	2018	Total
Arusha	0	0	1	0	0	0	0	1
The Hague	0	0	0	0	0	0	1	1
Total	**0**	**0**	**1**	**0**	**0**	**0**	**1**	**2**

B. Orders and decisions of the Appeals Chamber related to review proceedings

	2012	2013	2014	2015	2016	2017	2018	Total
Arusha	1	0	1	4	11	30	5	52
The Hague	0	0	0	3	1	0	1	5
Total	**1**	**0**	**1**	**7**	**12**	**30**	**6**	**57**

C. Orders and decisions of the Appeals Chamber (other)

	2012	2013	2014	2015	2016	2017	2018	Total
Arusha	2	11	9	9	10	2	5	48
The Hague	0	0	8	5	48	46	29	136
Total	**2**	**11**	**17**	**14**	**58**	**48**	**34**	**184**

III. The Trial Chambers and single judges

A. Orders and decisions of the Trial Chambers related to trial proceedings

	2012	2013	2014	2015	2016	2017	2018	Total
Arusha	0	0	0	0	0	0	0	0
The Hague	0	0	0	5	31	114	30	180
Total	**0**	**0**	**0**	**5**	**31**	**114**	**30**	**180**

B. Orders and decisions of the Trial Chambers related to cases referred to national jurisdictions

	2012	2013	2014	2015	2016	2017	2018	Total
Arusha	0	0	0	12	0	0	0	12
The Hague	0	0	0	0	0	0	0	0
Total	**0**	**0**	**0**	**12**	**0**	**0**	**0**	**12**

C. Orders and decisions of single judges related to witness protection measures

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	5	3	27	18	27	6	2	88
The Hague	0	22	32	41	54	54	19	222
Total	**5**	**25**	**59**	**59**	**81**	**60**	**21**	**310**

D. Orders and decisions of single judges related to commencement of proceedings on contempt of court and false testimony

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	0	1	2	0	21	7	2	33
The Hague	0	1	3	0	5	2	6	17
Total	**0**	**2**	**5**	**0**	**26**	**9**	**8**	**50**

E. Orders and decisions of single judges (other)

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	1	5	7	17	47	21	5	103
The Hague	0	1	8	10	19	9	4	51
Total	**1**	**6**	**15**	**27**	**66**	**30**	**9**	**154**

IV. Total

A. Total judgments: 2

B. Total orders and decisions

	2012	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*Total*
Arusha	25	37	100	95	170	112	22	561
The Hague	0	42	92	114	235	294	121	898
Total	**25**	**79**	**192**	**209**	**405**	**406**	**143**	**1 459**

Enclosure 3

Projected timeline for completion of trials and appeals from judgment

Appeals from judgment

Case	*Pre-appeal phase (months)*	*Deliberations judgment drafting (months)*	*Total time (months)*
Karadžić	24 (actual)	8[a]	32[a]
Mladić	24	12–18	36–42

[a] Subject to developments in the upcoming hearing and the judges' deliberations.

Trials

Case	*Pre-trial phase (months)*	*Prosecution case (months)*	*Defence case (months)*	*Final submissions, deliberations and judgment drafting (months)*	*Total time (months)*
Stanišić and Simatović	18 (actual)	12–15	12–15	12	54–60

Projections for the completion of the above cases are set forth in sections II.A.1 and II.A.3 of the report.